

STATE OF MICHIGAN
COURT OF APPEALS

THERESA L. ANDERSON,

Plaintiff-Appellant,

v

KURT E. ANDERSON,

Defendant-Appellee.

UNPUBLISHED

June 22, 2010

No. 286774

Washtenaw Circuit Court

LC No. 07-000593-DM

Before: DAVIS, P.J., AND DONOFRIO AND STEPHENS, JJ.

Per Curiam.

Plaintiff appeals as of right a provision of the parties' judgment of divorce wherein the trial court divided marital debt arising from a \$100,000 equity loan on the former marital home. Because the trial court's ruling regarding the disposition of the marital debt was inequitable, we reverse and remand for further proceedings related to the division of that debt.

In this divorce action, the parties entered into a consent agreement on the record that settled most issues including spousal support and child support. Specifically, defendant agreed to pay plaintiff a sum of \$2,500 in combined spousal support and child support for a term of two years. One of the issues the parties left unresolved, and the issue that constitutes the challenge on appeal, involves the distribution of \$100,000 of marital debt arising from a home equity loan the parties secured on the former marital home during the marriage. Both parties agreed to be bound by the trial court's distribution of the debt, and the judgment dated March 4, 2008, entered March 6, 2008, provided, "[t]he parties agreed to be bound by the judge's decision as if it were binding arbitration on this issue" Following a hearing, the trial court awarded \$12,700 of the debt to defendant, and left plaintiff, who was also awarded the marital home, responsible for the remaining \$87,300 of the debt. In arriving at its final ruling, the trial court considered the amount of combined child and spousal support that defendant agreed to pay plaintiff. Specifically, the trial court considered the amount of combined support that defendant would have been obligated to pay plaintiff under the spousal and child support guidelines as compared to the amount defendant was obligated to pay under the terms of the parties' consent agreement. On appeal, plaintiff contends that by doing so, the trial court improperly modified the terms of the parties binding agreement.

While the judgment provides for a binding decision as if the parties had engaged in binding arbitration, the record of October 9, 2007, is mixed in terms of what "binding" means. Statements on the record both suggested and admitted that the decision was not appealable. The

trial court, in accordance with the agreement, received the parties' briefs, heard argument, and decided the home equity loan issue on January 4, 2008. After a series of procedural motions, the trial court entered the judgment of divorce on March 6, 2008. Neither plaintiff nor defendant sought to vacate or confirm the "arbitration" determination. Rather plaintiff sought reconsideration of the trial court's determination of the home equity loan issue. The trial court denied reconsideration by written opinion and order entered April 2, 2008. We can only conclude from the record presented that the agreement, as placed on the record, was not the result of arbitration, but was in reality a stipulation to submit the issue to the trial court on briefs and argument and that the parties agreed to be bound by such decision. As a result, plaintiff has waived review of the trial court's ruling regarding the marital debt because she agreed on the record to be bound by the trial court's decision. See *Grant v AAA Michigan/Wisconsin, Inc (On Remand)*, 272 Mich App 142, 148; 724 NW2d 498 (2006) ("A party who expressly agrees with an issue in the trial court cannot then take a contrary position on appeal"). However, we address and decide plaintiff's argument on appeal because principles of equity demand resolution of this issue. See MCR 7.216(A)(7) (this Court may "at any time, in addition to its general powers, in its discretion, and on the terms it deems just . . . enter any judgment or order or grant further or different relief as the case may require.").

We conclude that the trial court did not modify the parties' binding consent agreement, contrary to plaintiff's claim on appeal. Instead, the trial court properly considered all of the facts and circumstances of the case when dividing the marital debt. *Reed v Reed*, 265 Mich App 131, 152; 693 NW2d 825 (2005). Moreover, defendant was required to pay \$2,500 per month in combined support both before and after the trial court issued its ruling on the marital debt. There was no erroneous modification of the parties' agreement.

We conclude that the trial court's ultimate distribution of the marital debt was inequitable in light of all the circumstances by virtue of a mathematical error. *Reed*, 265 Mich App at 152. We review a trial court's findings of fact in its division of marital property for clear error while the trial court's dispositional ruling "should be affirmed unless the appellate court is left with the firm conviction that the [property] division was inequitable." *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992). The trial court's calculation of what defendant owed plaintiff to equalize the debt was clearly erroneous.¹ Specifically, the trial court failed to take into account the fact that, according to the trial court, under the guidelines, defendant would have been required to make a combined monthly spousal/child support payment of \$946 (\$503 child

¹ In reaching our conclusion, we are mindful that the trial court, following entry of the initial judgment of divorce, implied that it never intended a 50/50 split of the debt, and language to the contrary in the judgment was wrong. However, the language of the judgment was not modified and the trial court's calculations reflect that a 50/50 split was intended, with defendant being credited for excess spousal support. More importantly, when a trial court diverges from equally dividing the marital estate, it must explain its decision to do so. *Reed*, 265 Mich App at 151. Here, such an explanation is lacking, unless the trial court intended not to divide the debt equally because of the agreement for excess spousal support in the first two years. Even assuming the latter, the calculation is incorrect with respect to what the trial court tried to do, and remand is warranted.

support/\$443 spousal support) for three years (36 months), not two years (24 months). Neither party challenges the trial court's findings with respect to the guidelines. While defendant would continue to pay child support during the third year of the divorce (and until the children reached 18), defendant was not required to pay a third year of spousal support that was called for in the guidelines as a result of the parties' agreement. The trial court noted that the guidelines required a combined spousal and child support payment of \$946 per month for three years, but when it calculated the numbers, the trial court multiplied \$946 by 24 months and then compared that difference with defendant's responsibility under the consent agreement, forgetting defendant's obligation to pay 12 additional months of spousal support under the guidelines. In other words, the trial court did not consider that plaintiff was entitled to an additional 12 months of spousal support under the guidelines that would not be paid as a result of the parties' agreement.

Thus, equitably, to reach the result desired by the trial court regarding the crediting of the "excess spousal support," under the agreement to defendant's half portion of the mortgage debt, the trial court should have considered defendant's total obligation under the guidelines for 24 months of child support ($\$503 \times 24 = \$12,072$) and 36 months of alimony ($\$443 \times 36 = \$15,948$) totaling \$28,020 ($\$12,072 + \$15,948$). Subtracting that figure from defendant's total obligation under the agreement ($\$60,000 - \$28,020$) equals \$31,980 that represents the total amount of excess spousal support under the agreement. When the excess spousal support under the agreement of \$31,980 is subtracted from defendant's \$50,000 share of the home equity loan, the end result is that defendant should have been deemed responsible for \$18,020 of the home equity loan (again $\$50,000 - \$31,980 = \$18,020$). However, the trial court ruled that defendant was liable for only \$12,704 of the home equity loan as a result of forgetting to account for the third year of spousal support payments defendant would have had to pay pursuant to the guidelines. Had the trial court properly arrived at the total amount of defendant's responsibility under the guidelines, it should have held defendant liable for an additional \$5,316 ($\$18,020 - \$12,704 = \$5,316$ or, more simply, $12 \text{ months} \times \$443 \text{ monthly guidelines' alimony} = \$5,316$). On remand, the trial shall adjust the amount for which defendant is credited since it appears that the trial court over credited defendant in the amount of \$5,316.

In sum, the trial court did not consider that plaintiff was entitled to an additional 12 months of spousal support under the guidelines. On remand, the trial court shall reduce the amount for which defendant is credited.

Reversed and remanded for further consideration. Costs to plaintiff. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens